

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

9	WILSON THOMAS,)	No. CR-F-98-5022 OWW
)	(No. CV-F-07-009 OWW)
10)	
)	ORDER DISMISSING MOTION FOR
11	Petitioner,)	WRIT OF HABEAS CORPUS
)	PURSUANT TO 28 U.S.C. § 2255
12	vs.)	FOR LACK OF JURISDICTION
)	
13)	
	UNITED STATES OF AMERICA,)	
14)	
)	
15	Respondent.)	
)	
16	_____)	

17 Wilson Thomas, a federal prisoner presently incarcerated at
18 F.C.I. in Sheridan, Oregon and who is proceeding *in pro per*, has
19 filed a motion for writ of habeas corpus pursuant to 28 U.S.C. §
20 2255. By this motion, Petitioner requests that "this court
21 correct his sentence under the current set of facts this
22 petitioner has no other option but to have the trial court Judge
23 enforce a California State Court Judge's order to have both
24 sentences as imposed run concurrent and were not, because of an
25 ongoing government impediment" and seeks a "new Judgment and
26 Commitment that would allow for the time that the U.S.M.S. has

1 inadvertently errored [sic] by failing to properly obey this
2 District Judge's order to have and maintain a federal detainer on
3 him at all times even though the BOP loaned him out at the State
4 Court Judge's order" and "for this court to give COMITY to the
5 State's order to run the State sentence concurrent"

6 On March 28, 2006, Petitioner filed a petition for writ of
7 habeas corpus pursuant to 28 U.S.C. § 2241 in the United States
8 District Court for the District of Oregon, No. CV-06-421-PA.¹ In
9 opposing that motion, the BOP submitted the Declaration of BOP
10 employee Theresa T. Talplacido. Petitioner submits a copy of Ms.
11 Taplacido's declaration in support of the instant Section 2255
12 motion, wherein Ms. Talplacido avers in pertinent part:

13 2. On March 24, 1995, Petitioner was
14 sentenced to three (3) years probation and
15 365 days in jail for Sale and Transportation
16 of a Controlled Substance, in the San
Bernardino, Superior Court, Case Number FBA-
00052

17 3. On February 3, 1998, Petitioner was
18 arrested by the Fresno Police Department on a
probation violation from the County of San
Bernardino, California, Case Number FBA-00052
....

19 4. On February 6, 1998, Petitioner was found
20 in violation of probation and he was
21 transferred to the custody of West Valley
Central Jail, in San Bernardino, California
....

22 5. On April 24, 1998, the U.S.M.S. from the
23 Eastern District of California issued a Writ
24 Ad Prosequendum for Petitioner to appear in
federal court for among other things,

25 ¹According to the PACER docket, Petitioner's Section 2241
26 motion remains under submission in the District of Oregon.

1 Conspiracy to Distribute and to Possess
2 Cocaine with Intent to Distribute Cocaine and
3 Cocaine Base, in violation of 21 U.S.C. § 846
4 and 841(a)(1), and Carrying a Firearm in
5 Relation to a Drug-Trafficking Crime, in
6 violation of 18 U.S.C. § 924(c)

7 6. On February 1, 1999, Petitioner was
8 sentenced by the Honorable Judge Wanger, in
9 the Eastern District of California for
10 Conspiracy to Distribute and to Possess
11 Cocaine with Intent to Distribute Cocaine and
12 Cocaine Base, in violation of 21 U.S.C. § 846
13 and 841(a)(1), for a 120 month sentence with
14 a 60 month supervision, and Carrying a
15 Firearm in Relation to a Drug-Trafficking
16 Crime, in violation of 18 U.S.C. § 924(c) for
17 a 60 month sentence with a 60 month
18 supervision as consecutive to each federal
19 sentence

20 7. Petitioner remained in the custody of
21 Fresno County Jail from April 28, 1998 to
22 February 17, 1999

23 8. Petitioner was transferred to another
24 state facility, Kern County Jail from
25 February 17, 1999, to February 26, 1999 and
26 then to San Bernardino County Jail

9. On April 2, 1999, Petitioner was
sentenced by the State of California for
violation of probation on Case Number FBA-
00052, to three (3) years to run concurrent
with federal sentence

10. On May 19, 1999, Petitioner was
transferred to California Department of
Corrections (CDC), to Chino Prison, in Chino,
California. He was paroled and released to
the street on January 26, 2001, even though
he had a federal detainer. The U.S.M.S. was
notified and Petitioner was ordered detained
for service of his federal sentence

11. On April 2, 2001, Petitioner was re-
arrested by the U.S.M.S. and his federal
sentence commenced. His sentence computation
was verified by BOP on many occasions. His
federal sentence was calculated and
aggregated to a 180 months sentence with 60

1 month supervision. He was given a projected
2 release date of on or about May 8, 2014 via
Good Conduct Time Release.

3 12. On September 14, 2004, he arrived at FCI
4 Sheridan.

5 In the instant motion, Petitioner asserts that "[a]fter
6 starting his federal sentence, the State then came and retrieved
7 Mr. Thomas from Lompoc F.C.I. and took him to custody to
8 adjudicate a warrant ... whereupon the State Court Judge ordered
9 his 3 year state sentence to be run concurrent with his federal
10 sentence, and the Marshalls [sic] were at the completion of the
11 state sentence hearing to come and pick Mr. Thomas up and return
12 him to Lompoc F.C.I., that did not occur." Petitioner further
13 asserts that "the Marshalls [sic] not only failed to retrieve him
14 they did not properly place a federal detainer on [him], and the
15 State of California, placed him in Chino Prison." After
16 Petitioner was paroled by the State and released, "the U.S.M.S.
17 was notified and they rearrested [Petitioner] on April 2, 2001,
18 and he was returned to BOP custody without giving comity under
19 the United States Constitution to the State Court Judges order of
20 the time that by an error of the U.S.M.S. who was commanded by
21 the federal court Judge, Judge Wanger, to serve his federal
22 sentence." Petitioner contends:

23 This petitioner would not have been able to
24 do anything but to request the U.S.M.S. to do
25 it's duty and retrieve this petitioner by
26 monitoring the proceedings and picking this
petitioner up upon completion of his state
hearing. see Title 28 U.S.C. § 566(a). The
primary role and mission of the United States
Marshals Service to provide for the security

1 and to obey, execute, and enforce all orders
2 of the United States District Courts and
3 Judge Wanger ordered Mr. Thomas to remain
4 detained, by lodging a detainer and keeping
5 track thereof of his body, and to maintain
6 control of Mr. Thomas even to the extent that
7 he was required to be retrieved and was not,
8 after the State Court had ordered his
9 sentence to run concurrent. Which now has
created an impediment to which he is paying
for by the tune of approximately 1095 days of
uncredited jail time, that BOP has no
authority, nor does the Warden of this
facility to adjust the Judgment and
Commitment or to correct the unlawful acts
which has caused his sentence to be
unconstitutionally lengthened.

10 The threshold issue is whether this court has jurisdiction
11 under Section 2255 to issue the petition for writ of habeas
12 corpus requested by Petitioner. *See Hernandez v. Campbell*, 204
13 F.3d 861, 864-865 (9th Cir.2000).

14 Generally, motions to contest the legality of a sentence
15 must be filed under Section 2255 in the sentencing court, while
16 petitions that challenge the manner, location, or conditions of a
17 sentence's execution must be brought pursuant to Section 2241 in
18 the custodial court. *Doganieri v. United States*, 914 F.2d 165,
19 169-170 (9th Cir.1990); *United States v. Giddings*, 740 F.2d 770,
20 771-772 (9th Cir.1984); *Brown v. United States*, 610 F.2d 672, 677
21 (9th Cir.1980).

22 Here, Petitioner challenges the failure of the BOP to credit
23 his federal sentence with the time served on his state sentence
24 in state prison because of the alleged failure by the U.S.
25 Marshals Service to return him to federal prison after the state
26 court imposed sentence to run concurrent with the federal

1 sentence.

2 28 U.S.C. § 2255 provides in pertinent part:

3 A prisoner in custody under sentence of a
4 court established by Act of Congress claiming
5 the right to be released upon the ground that
6 the sentence was imposed in violation of the
7 Constitution or laws of the United States, or
8 that the court was without jurisdiction to
9 impose such sentence, or that the sentence
was in excess of the maximum authorized by
law, or is otherwise subject to collateral
attack, may move the court which imposed the
sentence to vacate, set aside or correct the
sentence.

10 In contending that this motion is properly brought pursuant
11 to Section 2255, Petitioner cites to Article IV, Section 1 of the
12 United States Constitution:

13 Full Faith and Credit shall be given in each
14 State to the public Acts, Records, and
15 Judicial Proceedings of every other State.
16 And the Congress may by general Laws
prescribe the Manner in which such Acts,
Records and Proceedings shall be proved, and
the Effect thereof.

17 Petitioner also refers to Section 2255 as follows:

18 A 1-year period of limitation shall apply to
19 a motion under this section. The limitation
period shall run from the latest of -

20 ...

21 (2) the date on which the
22 impediment to making a motion created by
23 governmental action in violation of the
Constitution or laws of the United States is
removed, if the movant was prevented from
making a motion by such governmental action

24

25 Neither of these provisions confer jurisdiction on this
26 court to consider Petitioner's Section 2255 motion. The court

1 concludes that this court does not have jurisdiction to hear
2 Petitioner's motion. As noted, Petitioner seeks a "new Judgment
3 and Commitment that would allow for the time that the U.S.M.S.
4 has inadvertently errored [sic] by failing to properly obey this
5 District Judge's order to have and maintain a federal detainer on
6 him at all times even though the BOP loaned him out at the State
7 Court Judge's order" and "for this court to give COMITY to the
8 State's order to run the State sentence concurrent"

9 Petitioner makes no claim that the federal sentence imposed on
10 him was illegal or that this court lacked jurisdiction to impose
11 the sentence. Petitioner makes no showing that this court
12 intended that his federal sentence run concurrent with any state
13 sentence that might be imposed by the state court. Petitioner's
14 claim relates solely to the execution of the federal sentence
15 imposed. Petitioner must seek this relief pursuant to 28 U.S.C.
16 § 2241 in the district court for the district in which Petitioner
17 is incarcerated, i.e., the United States District Court for the
18 District of Oregon.

19 ACCORDINGLY, as set forth herein,
20 Petitioner's motion for writ of habeas corpus pursuant to 28
21 U.S.C. § 2255 is DISMISSED for lack of jurisdiction.

22 IT IS SO ORDERED.

23 **Dated: February 8, 2007**
24 668554

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE